

**Medical Center of Beaver County, Inc. and District  
1199P, National Union of Hospital and Health  
Care Employees, RWDSU, AFL-CIO. Case 6-  
CA-14609**

March 7, 1983

**DECISION AND ORDER**

**BY CHAIRMAN MILLER AND MEMBERS  
JENKINS AND HUNTER**

On July 15, 1982, Administrative Law Judge William A. Gershuny issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

<sup>1</sup> The Administrative Law Judge found that Respondent violated Sec. 8(a)(1) of the National Labor Relations Act, as amended, by maintaining and enforcing the following dress code:

Hospital policy does not permit the use or wearing of, while on duty, buttons, hats, pins or other types of non-professional or unauthorized insignia which may represent any political, economic or labor organization.

Citing the Board's decision in *T.R.W. Bearings Division, a Division of T.R.W., Inc.*, 257 NLRB 442 (1981), the Administrative Law Judge found this policy to be overly broad in terms of time and location because it does not contain a clear statement as to its nonapplication (1) during break periods, meal periods, and other similar periods, and (2) in nonpatient care areas.

Chairman Miller and Member Hunter disavow reliance on *T.R.W., Inc.*, *supra*, but agree with the Administrative Law Judge that the rule is overly broad because it does not apply solely to patient care areas. However, they would find it valid in terms of time since it states that employees are only restricted "while on duty." See the concurring and dissenting opinion in *Intermedics, Inc., and Surgitronics Corporation, a wholly owned subsidiary of Intermedics, Inc.*, 262 NLRB 1407 (1982).

The Administrative Law Judge further found that Respondent enforced this policy in a disparate manner because it prohibited employees from wearing union pins, while permitting them to wear other similarly constructed pins and buttons. Respondent excepts to this finding, contending that the record evidence fails to establish that any hospital supervisor knowingly permitted an employee to wear any item in violation of the dress code. We find that the record fails to support Respondent's contention, as it clearly indicates that hospital supervisors permitted Respondent's employees to wear insignia representing political and economic organizations.

In addition to the hospitalwide rule, Respondent maintained an additional stricture for employees in the dietetics department:

Rings, other than engagement rings or wedding bands, are not to be worn. Jewelry, except watches, should not be worn while in uniform. Post earrings for those with pierced ears may be worn. Service award/professional pins are the only jewelry permitted. These rules are necessary to prevent contamination of foods by jewelry/pins falling into foods.

In agreement with the Administrative Law Judge, we find this rule to be overly broad because it is not limited to circumstances in which the em-

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Medical Center of Beaver County, Inc., Rochester, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

employees are handling food nor was it uniformly enforced since service award pins are permitted.

**DECISION**

**STATEMENT OF THE CASE**

WILLIAM A. GERSHUNY, Administrative Law Judge: A hearing was held on March 15, 29, and 30, 1982, in Pittsburgh, Pennsylvania, on complaint issued August 4, 1981, alleging violations of Section 8(a)(1) and (3) of the Act based on the maintenance and disparate enforcement of a provision of Respondent's dress code prohibiting the wearing of pins, buttons, and unauthorized insignia while on duty.

Upon the entire record, including my observation of witness' demeanor, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. JURISDICTION**

The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of the Act.

**II. LABOR ORGANIZATION INVOLVED**

The complaint alleges, the answer admits and I find that the Union, District 1199P, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE UNFAIR LABOR PRACTICES**

Respondent is a health care institution providing inpatient and outpatient medical care.

On March 10, 1981, the Union filed a representation petition for a unit including licensed practical nurses and technicians. An election was held on May 15, 1981, and, on April 30, 1982, the Union was certified by the Board. 261 NLRB 678 (1982).

The hospital's general dress code policy, established prior to any organizational campaign by the Union, provides in relevant part as follows:

Hospital policy does not permit the use or wearing of, while on duty, buttons, hats, pins or other types of non-professional or unauthorized insignia which may represent any political, economic or labor organization.

Employees of the dietetics department are subject to this policy while in uniform and additionally are subject to a department rule permitting the wearing of wedding rings and bands, watches, post earrings, service pins, and professional pins. These provisions otherwise are not limited to particular work areas (such as patient care areas or food service areas) or to particular periods of the workday.

It is uncontroverted that union buttons were distributed on May 13, 1981, 2 days prior to the election, and were worn by employees in the nursing service departments, dietetics department, and pharmacy; that, despite instructions by supervisors in the nursing service department that they were not to wear such buttons in the patient care areas, employees continued to wear them and were not disciplined; that, despite the fact that the pharmacy is not a patient care area or in the vicinity of one, an employee was instructed to (and did) remove her union pin; and that the head baker in the dietetics department, William Braddick, received a written disciplinary warning for his refusal to remove two union pins.

It also is uncontroverted that nursing service department employees regularly and openly wear service award pins and appreciation pins, both presented by Respondent, as well as other pins and emblems of a political, religious, commercial, seasonal, comic, or "booster" nature and that Respondent issues no specific instructions for their removal; that pharmacy department policy does not prohibit the wearing of seasonal and other buttons; and that, while employees in the dietetics department are permitted to wear appreciation and service pins, other employees have had to be continually cautioned about their wearing of jewelry but, unlike Braddick, have never been disciplined.

For reasons set forth below, I conclude that Respondent unlawfully maintained and enforced an overly broad policy concerning the wearing of insignias, pins, and buttons.

It is now well established that health care facilities are not subject to many of the Board policies relating to solicitation and distribution rules and dress codes traditionally applied in industrial settings, but rather are subject to other policies which recognized the need to balance the interest and comfort of the patients against the Section 7 rights of employees. *Evergreen Nursing Home and Rehabilitation Center, Inc.*, 198 NLRB 775 (1972); *George J. London Memorial Hospital*, 238 NLRB 704 (1978); *Baptist Memorial Hospital*, 242 NLRB 642 (1979); *St. Joseph's Hospital, etc.*, 247 NLRB 869 (1980). At the same time, hospital rules and policies which are overly broad in terms of time and location are presumptively invalid. *T.R.W. Bearings Division, et al.*, 257 NLRB 442 (1981). Here, as in *T.R.W.*, the dress codes fails to contain a clear statement as to its nonapplication (1) during break periods, meal periods, and other similar periods, and (2) in nonpatient care areas. As such, it is invalid for all purposes, regardless of its application in practice only at specific times and places. *The Times Publishing Company*, 231 NLRB 207 (1977).

Not only is the policy as written unlawful, it has been disparately enforced to specifically prohibit the wearing of union pins, while remaining unenforced as to the

wearing of other pins and buttons similarly constructed. The arbitrary basis of enforcement is unlawful. *Pay'N Save Corporation*, 247 NLRB 1346 (1980); *London Memorial Hospital, supra*.

#### IV. THE REMEDY

Having found that Respondent has violated Section 8(a)(1) and (3), it shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and, pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>1</sup>

The Respondent, Medical Center of Beaver County, Inc., Rochester, Pennsylvania, its officers, agents, successors, and assigns, shall:

##### 1. Cease and desist from:

(a) Maintaining and enforcing a broad rule prohibiting employees from the use or wearing, while on duty, of buttons or other types of nonprofessional or unauthorized insignia which may represent any political, economic, or labor organization.

(b) Enforcing or threatening to enforce, by taking disciplinary action or otherwise, a rule prohibiting the wearing of union pins, while permitting other insignia of a nonprofessional nature to be worn.

##### 2. Take the following affirmative action:

(a) Expunge from its files any reference to a written warning issued to William Braddick in May 1981, for wearing union pins and notify him in writing that this has been done.

(b) Post at each of its locations copies of the attached notice marked "Appendix."<sup>2</sup> Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>1</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>2</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT maintain and enforce a broad rule prohibiting employees from the use or wearing, while on duty, of buttons or other types of non-

professional or unauthorized insignia which may represent any political, economical, or labor organization.

WE WILL NOT enforce or threaten to enforce, by taking disciplinary action or otherwise, a rule prohibiting the wearing of union pins, while permitting other insignia of a nonprofessional nature to be worn.

WE WILL expunge from our files any reference to a warning issued to William Braddick in May 1981 relating to the wearing of union pins and notify him in writing that this has been done.

MEDICAL CENTER OF BEAVER COUNTY,  
INC.